

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 396

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE RELIABLE EYEWITNESS
IDENTIFICATION ACT; PROVIDING PROCEDURES FOR LINEUPS AND PHOTO
ARRAYS; REQUIRING EYEWITNESS STATEMENTS; REQUIRING THAT RECORDS
BE KEPT OF LINEUP AND PHOTO ARRAY PROCEDURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Reliable Eyewitness Identification Act".

Section 2. DEFINITIONS.--As used in the Reliable
Eyewitness Identification Act:

A. "administrator" means a person who conducts a
lineup or photo array procedure;

B. "eyewitness" means a person whose identification
of another person may be relevant in a criminal investigation
or proceeding;

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1 C. "lineup" means a series of live persons shown to
2 an eyewitness for the purpose of determining whether the
3 eyewitness can identify the subject;

4 D. "member" means a person or a photograph that is
5 included in a lineup or photo array;

6 E. "photo array" means a series of photographs
7 shown to an eyewitness for the purpose of determining whether
8 the eyewitness can identify the subject;

9 F. "subject" means a person relevant to a criminal
10 investigation who was seen by an eyewitness and who is sought
11 to be identified through a lineup or photo array; and

12 G. "suspect" means a person who is believed to be
13 the subject.

14 Section 3. LINEUP OR PHOTO ARRAY PROCEDURE.--

15 A. A state or local law enforcement officer shall
16 comply with the lineup or photo array procedures when
17 reasonably able to do so.

18 B. Unless otherwise required by the age,
19 disability, emotional trauma or language needs of the
20 eyewitness, only an administrator shall be present with an
21 eyewitness during a lineup or photo array procedure as provided
22 in this section, except that a suspect's attorney may be
23 present during a lineup of live persons. No other person shall
24 be in a position to be seen or heard by the eyewitness during
25 the lineup or photo array procedure.

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1 C. The administrator shall:

2 (1) during a lineup of live persons, not know
3 who among the members is a suspect; or

4 (2) during a photo array, use a procedure
5 whereby the administrator does not know which photograph the
6 eyewitness is viewing at any given time.

7 D. Prior to being shown a lineup or photo array,
8 and as close in time to the incident as possible, an eyewitness
9 shall give, in the eyewitness's own words, a description of the
10 subject and a description of the circumstances under which the
11 subject was seen by the eyewitness, including the time of day,
12 the length of time the subject was seen, the distance from the
13 eyewitness to the subject and the lighting conditions. The
14 description may be recorded or transcribed or written by the
15 eyewitness.

16 E. Prior to a lineup or photo array, an eyewitness
17 shall be instructed that:

18 (1) the eyewitness should not feel compelled
19 to make an identification;

20 (2) the subject may or may not be among the
21 members of the lineup or photo array;

22 (3) the eyewitness may take as much time as
23 the eyewitness wants to view the lineup or photo array; and

24 (4) an identification, or a lack of
25 identification, will not necessarily end the investigation.

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1 F. No more than one suspect shall be included in a
2 lineup or photo array.

3 G. A live lineup shall consist of at least six
4 persons.

5 H. A photo array shall consist of eight photographs
6 if possible, but no fewer than six photographs. No more than
7 one photograph of the suspect shall be included in the photo
8 array.

9 I. Members of a lineup or photo array shall be
10 shown in one but not both of the following ways:

11 (1) sequentially so that an eyewitness views
12 only one member at a time and expresses an opinion as to that
13 member before seeing the next member. The eyewitness shall be
14 shown all of the members included in the lineup or photo array
15 sequentially even if an identification has been made before all
16 of the members have been viewed by the eyewitness; or

17 (2) simultaneously so that an eyewitness views
18 all of the members included in the lineup or photo array at the
19 same time.

20 J. A member of a lineup or photo array shall
21 generally fit the description of the subject, and no member
22 shall unduly stand out from other members of the lineup or
23 photo array.

24 K. Except as provided in Section 4 of the Reliable
25 Eyewitness Identification Act, a suspect or a photograph of a

1 suspect shall not be presented to an eyewitness for the purpose
2 of identification unless the suspect or photograph is included
3 in a lineup or photo array.

4 L. Immediately after a lineup or photo array, an
5 eyewitness shall complete a form describing the eyewitness's
6 reactions to the lineup or photo array procedure, any
7 identification made by the eyewitness and the degree of
8 confidence felt by the eyewitness in making an identification.
9 If an eyewitness is unable to complete the form in writing, the
10 eyewitness shall be recorded while orally providing the
11 information required by the form. No one present at the lineup
12 or photo array procedure shall communicate to the eyewitness
13 any information or suggestion concerning the correctness of the
14 identification.

15 M. A complete audio and visual recording shall be
16 made of each lineup or photo array procedure and shall include:

17 (1) all of the members in the lineup or photo
18 array;

19 (2) all of the persons present during the
20 lineup or photo array procedure;

21 (3) any remarks or actions made during the
22 lineup or photo array procedure;

23 (4) any reactions by the eyewitness; and

24 (5) the eyewitness giving a description
25 pursuant to Subsection D of this section and completing the

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1 form pursuant to Subsection L of this section.

2 N. An administrator shall comply with the
3 provisions of Subsection M of this section unless the
4 administrator has good cause and makes a contemporaneous
5 written or electronic record of the reasons for not complying.

6 Good cause includes:

7 (1) the recording equipment was not reasonably
8 available; or

9 (2) the recording equipment failed and
10 obtaining replacement equipment was not feasible.

11 Section 4. IDENTIFICATION OUTSIDE A LINEUP OR PHOTO
12 ARRAY.--

13 A. A suspect may not be shown to an eyewitness
14 outside a lineup or photo array procedure for the purpose of
15 identification unless:

16 (1) the suspect is shown within a reasonable
17 time after the subject was seen by the eyewitness;

18 (2) initial information pursuant to Subsection
19 C of Section 3 of the Reliable Eyewitness Identification Act is
20 obtained from the eyewitness;

21 (3) the suspect fits the description of the
22 subject described by the witness;

23 (4) the suspect was found in close proximity
24 in time and place to the event seen by the eyewitness; and

25 (5) it is not reasonably possible to conduct a

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1 lineup or photo array procedure.

2 B. All requirements for identification outside a
3 lineup or photo array procedure as set forth in this section
4 shall be documented and preserved.

5 Section 5. PRESERVATION OF RECORD.--A record of a lineup
6 or photo array procedure shall be made that includes:

7 A. the date, time and location of the lineup or
8 photo array procedure;

9 B. the names of all persons present during the
10 lineup or photo array procedure;

11 C. the names of the members of the lineup or photo
12 array and the sequence in which the members were shown to the
13 eyewitness;

14 D. copies of all photographs used in a photo array,
15 if any, and the sources of all photographs used;

16 E. identification and nonidentification results
17 obtained during the procedure and signed by the eyewitness;

18 F. the information provided by the eyewitness
19 pursuant to Subsections D and L of Section 3 of the Reliable
20 Eyewitness Identification Act; and

21 G. the recording made pursuant to Subsection M of
22 Section 3 of the Reliable Eyewitness Identification Act.

23 Section 6. ADMISSIBILITY OF EVIDENCE.--Compliance with
24 the Reliable Eyewitness Identification Act shall not solely
25 determine the admissibility of evidence.

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